

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CBP AND ICE: DOES THE CURRENT ORGANIZATIONAL STRUCTURE
BEST SERVE U.S. HOMELAND SECURITY INTERESTS? PART III

PRESENTED BY
T.J. BONNER
NATIONAL PRESIDENT

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The National Border Patrol Council appreciates the opportunity to once again present the views and concerns of the 10,500 front-line Border Patrol employees that it represents regarding the organizational structure of the components within the Department of Homeland Security responsible for enforcing immigration, customs, and agriculture laws.¹

The Homeland Security Act of 2002 established the Directorate of Border and Transportation Security, and transferred thereto all of the functions, personnel, assets and liabilities of the Customs Service, the Transportation Security Administration, the Federal Protective Service, the Federal Law Enforcement Training Center, the Office for Domestic Preparedness, certain agricultural inspection functions, and the enforcement programs of the Immigration and Naturalization Service. It also called for the establishment of a Bureau of Border Security to establish the policies for performing all of the immigration enforcement functions that were transferred to the Directorate of Border and Transportation Security, and to oversee the administration of such policies. Significantly, the Homeland Security Act as originally enacted did **not** contemplate merging the immigration and customs enforcement functions, but rather maintained a very bright line of demarcation between the two.

On February 4, 2003, the President of the United States submitted a revised Reorganization Plan to the Congress that created two enforcement bureaus under the Directorate of Border and Transportation Security instead of the single Bureau of Border Security envisioned by the Homeland Security Act. Under the new structure, most of the enforcement resources of the Immigration and Naturalization Service and Customs Service were split along geographic lines and placed into the Bureau of Customs and Border Protection if they worked near the borders or at a port of entry, and into the Bureau of Immigration and Customs Enforcement if they did not. At the same time, the Administration launched the controversial “One Face at the Border” initiative that merged the

¹ The National Border Patrol Council previously offered testimony concerning this matter before the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security on June 15, 2004; before the Subcommittee on Management, Integration, and Oversight of the Committee on Homeland Security on March 9, 2005; and before the Subcommittee on Immigration, Border Security and Claims of the Committee on the Judiciary on May 5, 2005.

immigration, customs, and agriculture inspections functions into a single occupation.

Both of these modifications to the Homeland Security Act were serious mistakes, and significantly hampered the ability of the new Department to carry out its mission. It should have been clear from the outset that tasking two bureaus to enforce the same laws, with jurisdiction divided along meaningless geographic lines, would lead to massive breakdowns in communication, coordination and cooperation. Likewise, it should have been apparent that the requisite levels of expertise would suffer greatly if three specialized occupations were merged into one. While several independent entities now acknowledge the folly of creating two separate enforcement bureaus to enforce the same laws,² there is no similar consensus concerning the problems that will result from the “One Face at the Border” initiative.³ This is probably due to the fact that there are still a fair number of inspectors who retain the specialized skills that they acquired as a result of the previous structure. Once sufficient numbers of these employees leave the agency, however, the shortcomings of the current approach will become all too evident. These three areas of law are each very complex and demand specialized training and experience. Providing employees with small amounts of generalized training and experience in all of these arcane fields will yield a generation of mediocre employees who are incapable of the high level of performance that the public expects and homeland security demands.

Far from being akin to a corporate merger, the consolidation of the immigration, customs, and agriculture functions into the new Bureau of Customs and Border Protection was much more analogous to a hostile corporate takeover. The Immigration and Naturalization Service’s well-deserved reputation for ineptitude assured that its role would be minimal during the transition and in the day-to-day

² See Heritage Foundation and Center for Strategic and International Studies, *DHS 2.0: Rethinking the Department of Homeland Security*, December 13, 2004 and Department of Homeland Security Office of Inspector General, Office of Inspections and Special Reviews, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, November 2005.

³ Nonetheless, this issue has been the subject of at least one critical study. See Migration Policy Institute, *One Face at the Border: Behind the Slogan*, June 2005.

administration of the new bureau. This was unfortunate, as many of the employees working at that agency were extremely knowledgeable, dedicated professionals who could have helped ensure that the immigration enforcement aspects were a high priority in the new Department. Sadly, this did not happen, and our Nation is at great risk as a result.

Simply merging the Bureaus of Customs and Border Protection and Immigration and Customs Enforcement will not fix the problems resulting from their creation. In fact, it is likely that such a move would exacerbate some of the existing problems. The new bureaucracy would in all likelihood continue to be dominated by legacy Customs Service managers, whose natural predilection will be to continue to emphasize customs enforcement at the expense of immigration and agriculture enforcement because they are much more familiar with customs laws and regulations. In order to undo the harm caused by the Administration's Reorganization Plan, it will be necessary to separate immigration and customs enforcement in addition to eliminating the meaningless and counter-productive geographic distinctions between border and interior enforcement. Likewise, the enforcement of agriculture laws should revert back to the control of the U.S. Department of Agriculture so that specialized experts perform and oversee that function. All of these areas of law are important, and in order for each of them to be properly emphasized, separate structures need to be re-established.

There are understandable concerns that three separate law enforcement entities would detract from the cooperation and coordination that are so essential when employees are working side by side. It is important to recognize that the historic competition between these legacy agencies was largely due to the funding formula that rewarded each agency based upon the number of seizures, apprehensions and prosecutions that were independently undertaken (or for which credit was claimed) instead of those resulting from cooperative ventures. This flaw can be easily remedied by rewarding cooperative efforts (where such efforts are feasible and appropriate) rather than independent actions.

The structure of these enforcement branches of the Department of Homeland Security has been discussed and studied at great length. Because of the importance of their missions, it is essential that this not be treated as an intellectual exercise, but rather as an urgent problem that needs to be addressed as expeditiously as possible. It is equally important to ensure that the proposed solutions actually cure the identified problems. To this end, the National Border Patrol Council strongly recommends that the law enforcement bureaus within the Department of Homeland Security be restructured along the lines of the statutes that are being enforced. One bureau should be responsible for the enforcement of immigration laws, one for customs laws, and another for agriculture laws. Within each such bureau, a structure that supports the accomplishment of the mission should be created. For example, the immigration bureau structure should include a Border Patrol program, an inspections program, an investigations program, an intelligence program, and a detention and removal program. This would ensure that all of the areas of law within the jurisdiction of the Department are administered and enforced by specialists who are comprehensively trained in a single discipline.

It must also be recognized that even a perfect organizational structure will fail if it is not supported by adequate funding and sufficient numbers of dedicated and experienced employees. All of these matters are under the direct control or strong influence of Congress. In addition to providing the necessary funding, it is important to establish a working environment that is conducive to attracting and retaining the best and brightest employees. The new “human resources management system” being implemented throughout the Department will have precisely the opposite effect. No one wants to work in an organization where their voice is muzzled and they are not treated and compensated fairly.

These goals can be quickly and easily attained through administrative action. Further delays are inexcusable, as each day of inaction leaves our Nation more vulnerable to additional terrorist attacks.